



# PROPOSED RULE MAKING

**CR-102 (July 2022)**  
**(Implements RCW 34.05.320)**  
 Do **NOT** use for expedited rule making

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 STATE OF WASHINGTON  
 FILED

DATE: November 03, 2023

TIME: 3:18 PM

WSR 23-23-038

**Agency:** State Building Code Council

- Original Notice**  
 **Supplemental Notice to WSR** \_\_\_\_\_  
 **Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR** 23-05-017 ; or  
 **Expedited Rule Making--Proposed notice was filed as WSR** \_\_\_\_\_; or  
 **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1);** or  
 **Proposal is exempt under RCW** \_\_\_\_\_.

**Title of rule and other identifying information:** (describe subject) WAC 51-51-0202 and WAC 51-51-0331: Amendments to 2021 International Residential Code to modify provisions for Family Home Childcare. This adoption increases the maximum children allowed in a Family Home Childcare scenario from twelve to sixteen. Additional safety features are also included in this rulemaking to be used when the children present exceed twelve. Applicable Sections in WAC 51-50 and 51-54A will also be amended with expedited rulemaking for consistency across codes.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
January 12, 2024	10:00 AM	1500 Jefferson St SE; Olympia, WA 98504	Please access the meetings in-person, or via Zoom or Conference call. The Zoom link and phone will be provided in the agenda at sbcc.wa.gov

**Date of intended adoption:** January 19, 2024 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: State Building Code Council  
 Address: PO Box 41449, Olymppia WA 98509-1449  
 Email: sbcc@des.wa.gov  
 Fax:  
 Other:  
 By (date) January 19, 2024

**Assistance for persons with disabilities:**

Contact Annette Haworth  
 Phone: 360-407-9255  
 Fax:  
 TTY:  
 Email:  
 Other:  
 By (date) January 12

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The proposed rule adopts changes to the provisions for "Family Home Childcare" in the 2021 International Residential Code. The changes are necessary to align with Senate Bill 5237 which allows the Department of Children Youth and Family to issue a waiver to the limit of twelve children. The changes allow up to sixteen children to be placed in a Family Home Childcare scenario while still using code requirements within the International Residential Code. Additional Safety considerations are added as well.

Amendments to WAC 51-51 For Family Home Childcare Provisions

WAC	Section	Specific Change	Rationale/Discussion
51-51-0202	Definition	The definition of "Family Home Childcare" is amended to allow up to 16 children in a Family Home Childcare scenario.	Increases definition from 12 children to 16 children and still permits the family home childcare to remain in the scoping of the Residential Code.
51-51-0331	Section R331	Section R331 is renumbered to R331.1	Change to include new Sections 331.2 and 331.3
	Section 331.1 #4	"A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d." is changed to "An automatic	Allows use of P2904 for sprinkler design which is considere equivalent to NFPA 13D

		residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.”	
	Section 331.1 Exception #2.3	“A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d.” is changed to “An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.”	Allows use of P2904 for sprinkler design which is considered equivalent to NFPA 13D
	Section 331.1 @ end	Smoke alarms and heat detectors shall be installed in accordance with the requirements of new construction per IRC 314. Provide an additional heat detector in each kitchen.	In the event of fire, occupant notification will be faster than out of date systems. The addition of kitchen heat detectors adds an additional location of detection.
	New Section 331.2	<b>R331.2 Additional requirements for family home child care with thirteen to sixteen children.</b> In addition to the requirements of Section 331.1 the provisions of this section shall apply to <i>family home child care</i> with thirteen to sixteen children.	This section and its subparts identify additional requirements for “Family Home Childcare” when more than twelve children are receiving care.
	New Section 331.2.1	<b>R331.2.1 Illumination in the event of power failure.</b> In addition to illumination requirements of Section R311.7.9, provide an artificial light source that activates upon termination of building power supply at all interior stairs serving child care areas.	This section requires additional emergency lighting when there are more than 12 children receiving care in a “Family Home Childcare.”
	New Section 331.2.2	<b>R331.2.2 Exterior exit doors serving child care areas.</b> Exterior exit doors serving child care areas shall comply with the requirements of Sections R311.2 and R311.3.	Doors serving “Family Home Childcare” with more than twelve children receiving care will need to comply with these sections to facilitate egress in the event of an emergency.
	New Section 331.3 (Option 1)	<b>(OPTION 1)</b> <b>R331.3 Sprinklers.</b> An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.	This first option would require a P2904 or NFPA 13D sprinkler system for “Family Home Childcare” when more than 12 children receive care.
	New Section 331.3 (Option 2)	<b>(OPTION 2)</b> <b>R331.3 Sprinklers.</b> An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.  <b>Exception:</b> Subject to approval of the <i>code official</i> , a sprinkler system is not required where all of the following conditions are met:  1. Child care areas are located on a floor within 4 feet of grade level; and 2. Each child care area shall have a door compliant with Section R311.2 and R311.3, leading directly to the exterior of the building.	This second option would require a P2904 or NFPA 13D sprinkler system for “Family Home Childcare” when more than 12 children receive care. It also allows for an exception to the sprinkler requirement based on Code Official approval, exiting door requirements, and proximity to grade requirements.

**Reasons supporting proposal:** RCW 19.27.031; RCW 19.27.074

**Statutory authority for adoption:** RCW 19.27.031; RCW 19.27.074

**Statute being implemented:** RCW 19.27.031; RCW 19.27.074

**Is rule necessary because of a:**

- Federal Law?  Yes  No  
Federal Court Decision?  Yes  No  
State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

**Type of proponent:**  Private  Public  Governmental

**Name of proponent:** (person or organization) WA State Department of Children Youth and Family

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Dustin Curb	1500 Jefferson St. SE, Olympia, WA 98504	360-972-4158
Implementation:	Dustin Curb	1500 Jefferson St. SE, Olympia, WA 98504	360-972-4158
Enforcement:	Local Jurisdictions		

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**

Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: Exempt under RCW 34.05.328 (5) (b) (iii)

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- |   |   |
|---|---|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |
- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).
- This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.
- Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions:** *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_\_\_\_\_
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** October 20, 2023

**Name:** Tony Doan

**Title:** Council Chair

**Signature:**



**WAC 51-51-0202 Section R202—Definitions.**

**ADULT FAMILY HOME.** A dwelling, licensed by the state of Washington department of social and health services, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An existing adult family home may provide services to up to eight adults upon approval from the department of social and health services in accordance with RCW 70.128.066.

**BUILDING.** Any one- or two-family *dwelling* or *townhouse*, or portion thereof used or intended to be used for human habitation, for living, sleeping, cooking or eating purposes, or any combination thereof, or any accessory structure.

**BUILDING, EXISTING.** A *building* or structure erected prior to the adoption of this code, or one that has passed a final inspection.

**CHILD CARE, FAMILY HOME.** A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of (~~twelve~~) sixteen or fewer children, including children who reside at the home.

**CHILD DAY CARE,** shall, for the purposes of these regulations, mean the care of children during any period of a 24 hour day.

**CONDITIONED SPACE.** An area, room or space that is enclosed within the building thermal envelope and that is directly or indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned spaces, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping or other sources of heating or cooling.

**DISTRIBUTED WHOLE-HOUSE VENTILATION.** A whole-house ventilation system shall be considered distributed when it supplies outdoor air directly (not transfer air) to each dwelling or sleeping unit habitable space (living room, den, office, interior adjoining spaces or bedroom), and exhausts air from all kitchens and bathrooms directly outside.

**DWELLING UNIT.** A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Dwelling units may also include the following uses:

1. Adult family homes, foster family care homes and family day care homes licensed by the Washington state department of social and health services.

2. Offices, mercantile, food preparation for off-site consumption, personal care salons or similar uses which are conducted primarily by the occupants of the dwelling unit and are secondary to the use of the unit for dwelling purposes, and which do not exceed 500 square feet (46.4 m<sup>2</sup>).

**EGRESS ROOF ACCESS WINDOW.** A skylight or roof window designed and installed to satisfy the *Emergency Escape and Rescue Opening* requirements of Section R310.2.

**ENCLOSED KITCHEN.** A kitchen whose permanent openings to interior adjacent spaces do not exceed a total of 60 square feet (6 m<sup>2</sup>).

**FIRE SEPARATION DISTANCE.** The distance measured from the foundation wall or face of the wall framing, whichever is closer, to one of the following:

1. To the closest interior *lot line*; or
2. To the centerline of a street, an alley or public way; or
3. To an imaginary line between two buildings on the *lot*.

The distance shall be measured at a right angle from the wall.

**FLOOR AREA.** The area within the inside perimeter of exterior walls of the building. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

**LANDING PLATFORM.** A landing provided as the top step of a stairway accessing a *Loft*.

**LOCAL EXHAUST.** An exhaust system that uses one or more fans to exhaust air from a specific room or rooms within a residential dwelling or sleeping unit.

**LOFT.** A space on an intermediate level or levels between the floor and ceiling of a dwelling or sleeping unit, open on one or more sides to the room or space in which the loft is located, and in accordance with Section R333.

**LOT LINE.** The line which bounds a plot of ground described as a *lot* in the title to the property.

**SALT WATER COASTAL AREA.** Those areas designated as salt water coastal areas by the local jurisdiction.

**SMALL BUSINESS.** Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.

**TOWNHOUSE UNIT.** A single-family *dwelling unit* in a *townhouse* that extends from foundation to roof and that has a yard or public way on not less than two sides that extends at least 50 percent of the length of each of these two sides.

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

**WAC 51-51-0331 Section R331—Family home child care.**

**R331.1 Family home child care.** For family home child care with more than six children, each floor level used for family child care purposes shall be served by two remote means of egress. Exterior exit doors shall be operable from the inside without the use of keys or any special knowledge or effort.

Basements located more than 4 feet below grade level shall not be used for family home child care unless one of following conditions exist:

1. Stairways from the basement open directly to the exterior of the building without entering the first floor;

2. One of the two required means of egress discharges directly to the exterior from the basement level, and a self-closing door is installed at the top or bottom of the interior stair leading to the floor above;

3. One of the two required means of egress is an operable window or door, approved for emergency escape or rescue, that opens directly to a public street, public alley, yard or exit court; or

4. ~~((A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d.))~~ An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

Floors located more than 4 feet above grade level shall not be occupied by children in family home child care.

EXCEPTIONS:

1. Use of toilet facilities while under supervision of an adult staff person;
2. Family home child care may be allowed on the second story if one of the following conditions exists:
  - 2.1. Stairways from the second story open directly to the exterior of the building without entering the first floor;
  - 2.2. One of the two required means of egress discharges directly to the exterior from the second story level, and a self-closing door is installed at the top or bottom of the interior stair leading to the floor below; or
  - 2.3. ~~((A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d.))~~ An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

Every sleeping or napping room in a family home child care shall have at least one operable window for emergency rescue.

EXCEPTION: Sleeping or napping rooms having doors leading to two separate means of egress, or a door leading directly to the exterior of the building.

Rooms or spaces containing a commercial-type cooking kitchen, boiler, maintenance shop, janitor closet, laundry, woodworking shop, flammable or combustible storage, or painting operation shall be separated from the family home child care area by at least 1-hour (~~fire-resistive~~) fire-resistant construction.

EXCEPTION: A (~~fire-resistive~~) fire-resistant separation shall not be required where the food preparation kitchen contains only a domestic cooking range, and the preparation of food does not result in the production of smoke or grease laden vapors.

Smoke alarms and heat detectors shall be installed in accordance with the requirements of new construction per IRC 314. Provide an additional heat detector in each kitchen.

**R331.2 Additional requirements for family home child care with thirteen to sixteen children.** In addition to the requirements of Section 331.1 the provisions of this section shall apply to *family home child care* with thirteen to sixteen children.

**R331.2.1 Illumination in the event of power failure.** In addition to illumination requirements of Section R311.7.9, provide an artificial light source that activates upon termination of building power supply at all interior stairs serving child care areas.

**R331.2.2 Exterior exit doors serving child care areas.** Exterior exit doors serving child care areas shall comply with the requirements of Sections R311.2 and R311.3.

**(OPTION 1)**

**R331.3 Sprinklers.** An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

**(OPTION 2)**

**R331.3 Sprinklers.** An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

EXCEPTION: Subject to approval of the *code official*, a sprinkler system is not required where all of the following conditions are met:

1. Child care areas are located on a floor within 4 feet of grade level; and

2. Each child care area shall have a door compliant with Section R311.2 and R311.3, leading directly to the exterior of the building.